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ABSTRACT

This issue of the "Freedom of Speech Newsletter" contains three articles. "Big Brother, 1976--Judges and the Gag Order" by Miles Clark examines constitutional censorship of the media and government secrecy. "Democratic Rights: A Socialist View" by Kipp Dawson argues that "the rulers of the United States have never granted the American people any of the rights we now enjoy." The author argues that capitalism in the United States and elsewhere is in deep crisis. "The Right of Revolution in American Public Address 1776-1860" by Winfred Allen, Jr., discusses the right of revolution and argues that a society failing to build in a "safety valve" for the relief of felt pressure is a society traveling the road to reaction and possibly violent revolution. (TS)

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FREEDOM OF SPEECH NEWSLETTER

Of the plethora of concerns for us to ponder this summer - syllabi for Fall courses, catching up on work for publication, whether our sabbatical should be a study of speech communication in Tahiti, Hawaii, or Cote d'Azur - there is one concern we must not simply ponder, but act upon. This concern is not only basic to our discipline but as important to our profession. This concern if acted upon directly would make major changes in our intra-professional activities as well as change perceptions held by the public of the role of Speech Communication.

Especially for those dealing with efforts to maintain Constitutional Rights, the concern this summer must be increased efforts to leave the ivory tower; increase efforts to expand upon and influence rhetorical history. There is little question of our being left behind if we do not take the lead in our society to call for accountability in the present; to shed light on the future.

When the American Bar Association has a convention, the Press is on the scene to relate important happenings. When the American Medical Association has a convention, the Press is on the scene to relate important happenings. Our colleagues in Business and Psychology seem to have enough impact on this society to require the Press' presence. Why is the Press not waiting with great anxiety to find out what the findings, feelings, and forceasts of professionals concerned with basic, human rights?!

It is most unbelievable that merely a modicum of professional response has been made to the recent disclosures of the activities of governmental intelligence agencies. Even the agencies for the most part have admitted wrong and illegal undertakings! Has our profession no thoughts on keeping all the citizens of this country free and secure? What has been the response by scholars in the discipline that dedicates itself to responsible communication? There are a few writers who have reflected rhetorical devices, communication environments, and comparisons between counter-agitational activities. These are few but important and necessary. They are not enough, though. These responses stop short in volume of contributors, concepts developed, and audience.

We must go beyond circulating our findings to each other. We must go beyond only chronicling the past. We must make a concerted effort to concern ourselves with the present and make inferences about the future of the First Amendment.

The climax of this Bicentennial Year is quickly approaching. Are we going to make a direct professional contribution to society concerning Constitutional Guarantees? Or, are the guarantees offered by the Constitution limited to "original owners only?" Let us be <u>active leaders</u> in maintaining those rights which are manditory to a free, open society.

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ARTICLES:

BIG BROTHER, 1976 - JUDGES AND THE GAG ORDER

by Miles Clark

DEMOCRATIC RIGHTS: A SOCIALIST VIEW

by Kipp Dawson

THE RIGHT OF REVOLUTION IN AMERICAN PUBLIC ADDRESS 1176-1860

by Winfred Allen, Jr.

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ANNOUNCEMENTS:

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Undergraduates and graduate students are encouraged to contribute to the Newsletter.

NEXT NEWSLETTER DEADLINE - September 1

CREDO
for
FREE AND RESPONSIBLE COMMUNICATION IN A DEMOCRATIC SOCIETY

Recognizing the essential place of free and responsible communication in a democratic society, and recognizing the distinction between the freedoms our legal system should respect and the responsibilities our educational system should cultivate, we members of the Speech Communication Association endorse the following statement of principles:

WE BELIEVE that freedom of speech and assembly must hold a central position among American constitutional principles, and we express our determined support for the right of peaceful expression by any communicative means available to man.

WE SUPPORT the proposition that a free society can absorb with equanimity speech which exceeds the boundaries of generally accepted beliefs and mores; that much good and little harm can ensue if we err on the side of freedom, whereas much harm and little good may follow if we err on the side of suppression.

WE CRITICIZE as misguided those who believe that the justice of their cause confers license to interfere physically and coercively with the speech of others, and we condemn intimidation, whether by powerful majorities or strident minorities, which attempts to restrict free expression.

WE ACCEPT the responsibility of cultivating by precept and example, in our classrooms and in our communities, enlightened uses of communication; of developing in our students a respect for precision and accuracy in communication, and for reasoning based upon evidence and a judicious discrimination among values.

WE ENCOURAGE our students to accept the role of well-informed and articulate citizens, to defend the communication rights of those with whom they may disagree, and to expose abuses of the communication process.

WE DEDICATE ourselves fully to these principles, confident in the belief that reason will ultimately prevail in a free marketplace of ideas.

Endorsed by the Speech Communication Association, December, 1972

Speech Communication Association, Statler Hilton Hotel, New York, NY 10001

BIG BROTHER, 1976 - JUDGES AND THE GAG ORDER

by

Miles Clark

Lecturer (journalism) USC, Ambassador College, and Cal State University, Los Angeles; Parker & Son Pub. (law books) former editor, Los Angeles Daily (legal) Journal.

Paucity of evidence of media has not slowed their rush to secrecy.

Can the courts constitutionally gag the media?

The First and Sixth Amendments have a new date with destiny. Their future relationship depends on how the U. S. Supreme Court deals with the rising tide of conflict between them as crystallized in the latest major contest: A Nebraska court gag order. A decision is expected by the Court before its summer recess.

Jerry Friedheim, general manager of the American Newspaper Publishers Association predicted to a recent meeting of journalists and attorneys that the Court will favor neither the press (1st) nor the courts (6th) but will weave a Solomon-like rule of law of their "co-equal compatability and mutual supportive nature." (1)

Friedheim warned media and lawyers to "remember the Bill of Rights belongs to the people..It is simply not true that the First and Sixth Amendments must collide to the damage of the accused or anyone else."

Anxiety of judges unfamiliar with the spotty way the media operates and overly solicitous of the ability of jurors to render objective opinions whether or not expressed to publicity about the trial has been growing at a rate to out do inflation. Paucity of evidence of media influence has not slowed their rush to secrecy.

The latest survey of the ability of jurors to keep an open mind has been released by the Los Angeles Times in a series of four articles beginning April 11, 1976. After investigating five trials of some prominence, Jerry Cohen, speaking for his team of reporters, writes, "No juror among the nearly 30 interviewed said he had been swayed by what he had read or heard before the trial." (2)

The trials included: Richard Speck convicted for the 1966 murders of eight student nurses (found guilty in 49 minutes); Juan Corona convicted of the mass killing of 25 farm drifters (guilty with a week's deliberation); William A. H. Willaims kidnapper of a newspaper editor (found guilty in four hours); W. A. (Tony)Boyle guilty of killing his union rival (took a day and a half); and Elmore Stephens charged with killing a Kentucky man (day and a half deliberation).

At issue in the gag order debate is whether the average juror must be shielded from the media. At stake is the media's right to do its job of reporting court trials and whether courts are completely beyond the reach of the public through the press.

Emily and William Harris, the Symbionese Liberation Army's final remnant, now preparing to stand trial in Los Angeles on 11 counts of assault with a deadly weapon, armed robbery and kidnapping,

have already posed the ultimate question. Their attorney has brought suit in Federal court accusing officials of giving the news, "highly prejudicial leads, information and gossip." Their hope is to delay the trial one year and/or win a dismissal. (3)

Yet the pair have deluged the media for two years with their own detailed reports of their acts and philosophy. The Patricia Hearst kidnapping and the public tragedy of her trial was not, as has been said, an invention of the news media.

Vermont Royster, sage of the Wall Street Journal, recently asked if the accused in future trials need merely gush forth with gory details to the media and thus atomatically win freedom claiming published reports made by himself makes a trial impossible?

Many attorneys, judges, media people and informed citizens believe a jury can render an opinion no matter what they have read or seen. Howard Privett, Los Angeles attorney and expert on gag rules, told a seminar of media and legal personnel, if a jury is not prejudiced by "watching the defendant sitting there, the deputy with his gun and the judge in his black robe intoning the charges, they will not be prejudiced by a newspaper account of the case." (4)

In England as the jury system developed, jurors were sworn to be impartial, but they were not expected to be totally ignorant. Royster says, "the concept was that the trial was more likely to be fair in its judgment precisely because the jurors lived in the community and knew something about all the people involved, the victim, the accused and the witnesses."

Chief Justice John Marshall displayed an early faith in the strength of the jury system when he wrote in 1807, "The theory of the law is that a juror who has formed an opinion cannot be impartial," but (he added), "it is not required that jurors be totally ignorant of the facts and issues." (5)

Erwin Charles Simants, last year, was charged with six counts of first degree murder or murder while attempting rape in Lincoln County, Nebraska. The murders were as brutal as they were numerous. Public feeling was high. The preliminary hearing on Oct. 23 was open to the public and many citizens of Sutherland, Nebraska, were present. The judge at that time ordered a gag on the press.

On Oct. 27 the District Court replaced it with another gag. Three days later all newspapers, radio and t.v. stations in the state appealed to the state's Supreme Court to lift the gag. They were told the Court would not hear the case until after the trial. They then asked for a stay of the order from U. S. Supreme Court Justice Harry A. Blackmun, assigned to oversee the state's judicial circuit. (6)

On Nov. 21 Blackmun issued an unusual order. He lifted the mandatory gag but said the court may, if it feels necessary, bar reporting of any pretrial confession or statement or details of a criminal record, if it could harm the defendant. He did this pending a review by the entire Court.

The trial was held and the local community got its information from the least reliable of all sources--public gossip. Simant was found guilty, and the gag order was moot. Now it is up to the High Court to make its views known. But they may take the easy way out, inasmuch as the issue is dead, and refuse to make the

ruling Friedheim expects would clarify the relationship of the First and Sixth Amendments.

The press is not without fault in bringing about the present stalemate. The trial of Bruno Hauptman in the kidnap death of the son of the Charles Lindberghs set a rock bottom record for obnoxious overkill by the press. (7) A recent televised version of that trial did not overdo the animal-like behavior of competing newspersons of that day. It might well be the planting of the seed of today's plight. (8)

Over the years the number of free press-fair trials causes grew. The excesses of the press in the Sheppard v. Maxwell case in 1956, in which Dr. Sam Sheppard was accused of killing his wife, finally brought a unique response from the High Court. In 1964 the U. S. Supreme court looking backward at Sheppard set a landmark giving instructions to trial judges on how to insure a fair trial and deal with the media. (9)

The Sheppard decision, however, caused a "legal mess" according to George Killenberg writing in Editor and Publisher (10) and may have been a contributing factor in 1975 when the Court its suggested restrictions on dealing with the media. In Murphy v. Florida, the Court said that "press coverage is not inherently prejudicial to the defendant's right...and jurors can still render an impartial, fair verdict." (11)

> "The muzzling of the press is a remed, which is all too readily available, and which requires the least effort by a busy judge."

Jack "Murph the Surf" Murphy, in that case, became a celebrity in the media following a series of robberies, such as the theft of the Star of India sapphire. However, when he reached trial the press had used up its enthusiasm and coverage was as sober as a judge. Still he appealed his conviction on grounds of earlier publicity. The Supreme Court turned him down 8 to 1.

Some observers believe the Court will take the Simant case as an opportunity to reaffirm Murphy's rule. But if they follow Blackmun's preliminary look-see, they will come up with a difficult role for the media in the future. A more conservative Court seems evident with the resignation of William O. Douglas and the appointment of Paul Stevens.

What of the evidence of influence of pre-trial media reports on the deliberations of jurors?

A review of the latest Newsletter of the Reporters Committee for Freedom of the Press shows no consistent direction by the courts and little by research studies. A Columbia University study in 1974 examined 23 synthetic juries. Half were given clippings of "prejudicial" material. The others were given clips with basic fact materials. Both juries listened to tapes of the trial. Of the jurors exposed to prejudicial material, 80% found the defendant guilty; of those not exposed only 39% found him guilty. (12)

One problem with the study is that the clips were given to jurors only minutes before the trial, while in actual cases, the trial of a defendant arrested under heavy publicity comes months afterwards, when the memory of it is vague.

A judge has many avenues by which he can insure a fair trial. He can control the careful selection of jurors and he can restrict certain parties in the trial from giving out information.

Does inflammatory information hurt or help? Richard Hawks, attorney for Juan Corona, boldly tried to influence jurors by his courtroom oratory and by emotional information he gave the media. Cohen in the Los Angeles Times, says "virtually all the jury found him guilty after only one week of deliberation.

Judge Harold R. Medina, senior judge of the U. S. Court of Appeals, who over the years has changed his mind about the media, said, "The muzzling of the press is a remedy which is all too readily available, and which requires the least effort by a busy judge. Omnibus gag orders seem to us to be clear violations of the First Amendment." (13) He has several times told the press to "fight like tigers every inch of the way" against gag orders.

The final word will be up to the U. S. Supreme Court. Its rule will come soon, even if it side steps the Simant case. Then the gag order issue will be up to trial judges for they are the ones who must face the difficult times when a community is aflame over a crime. Such a community deserves justice as well as freedom of the press. The Constitution provides for both and both are essential to a free and democratic society.

Notes:

1. Editor and Publisher, March 20, 1976, page 10.
2. Los Angeles Times, April 11, 1976, page 3, Part II.
3. Ibid., January 12, 1976, Part II.
4. Pasadena, Star News, October 24, 1974, page 8, Sect. C.
5. Editor and Publisher, March 14, 1976, page 14.
6. Wall Street Journal, February 4, 1976.
7. William Francois, MASS MEDIA LAW AND REGULATION (1975) p. 159
8. NBC "The Lindberg Kidnapping Case", February 26, 1976.
9. Francois, p. 163.
10. Editor and Publisher, February 28, 1976, p. 24.
11. Ibid. p. 24.
12. Press Censorship Newsletter, No. VIII, Oct.-Nov. 1975, p. 60
13. Editor and Publisher, February 28, 1976, p. 14.

FREE SPEECH YEARBOOK 1975

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DEMOCRATIC RIGHTS: A SOCIALIST VIEW

by

Kipp Dawson

National S.W.P. Headquarters

"...the rulers of the United States have never granted the American people any of the rights we now enjoy."

The Bill of Rights, and in particular the First Amendment, are among the proudest achievements of the American people. Current challenges to those rights call on us not only to applaud them, but to learn from our own history how to make them real.

Looking back over the last two hundred years we can see that the rulers of the United States have never granted the American people any of the rights we now enjoy. It took a revolutionary struggle by farmers and the urban poor to get the Bill of Rights added to the U. S. Constitution---four years after the new American rulers drafted it, and two years after it became the Law of the Land. Ever since, the democratic rights enumerated in the constitution have alternately been enforced or ignored, extended or contracted, in direct proportion to the vigilance and struggles of the American people. Today it is becoming clear that it will take another revolutionary struggle to enforce those very same rights.

To look at a few examples from our history:

When millions of Americans took up arms in the Civil War of the 1860s, the slave power of the southern plantation aristocracy was broken. Following the war southern Blacks and their supporters succeeded in extending democratic rights through the reforms of radical reconstruction.

But when reconstruction was crushed under the heels of the rising northern capitalist rulers, and the massive pressure subsided, democratic rights suffered heavy blows. The last decades of the 19th century saw the mobilization of local cops and state militas against the labor movement, and the use of the Ku Klux Klan against the former slaves in the south. Prior to, during and after World War I the government whipped up patriotic ferver around the "war effort." It was able to arrest, imprison, and deport thousands of radical labor activities, opponents of the war, and socialists. It was in this atmosphere that the Federal Bureau of Investigation was born.

This same cycle has been repeated several times. After the second world war a previously militant labor movement was cowed and misled into submission to the McCarthyite witch-hunt.

But in the 1960s a new generation of Black civil rights fighters and student opponents of the war in Vietnam was able to cut through the McCarthyite fog and reintroduce the American people to their traditions of struggle for justice and democracy. Through massive mobilizations, especially against the war in Vietnam, millions of Americans learned both the importance of democratic rights and their role in guarding them. The U. S. government had to pull back from some of its more overt antidemocratic practices. The most dramatic result of this new mass vigilance,

coupled with the heroism of the Vietnamese people, was the forced withdrawal of the U. S. government from its genocidal war in Southeast Asia. Other important gains were made in the area of recognition of some basic rights for Black people and women, and growing acceptance of the democratic rights of political dissidents. Over and over again jurors refused to go along with government persecution of radicals, Black militants, and women defending themselves against attack.

Today the fight for democratic rights has entered a new stage. The lines are being drawn more clearly than ever. Facades are crumbling, and people are learning that behind all their rhetoric the ruling rich in this country don't like democracy. That's understandable. Their power and privilege are based on a denial of democracy -- on a minority hoarding the wealth produced by a majority.

The ruling class especially does not like to see mass mobilizations against its policies. It doesn't like to see working people recognize and make use of their right to organize, to strike, to live a decent life. The ruling rich don't like when Black people assume that they have some basic human rights and organize to fight for them. They don't like a political atmosphere of openness, of challenge to the status quo, of massive acceptance of the rights of radicals and revolutionaries to constitutional protection from harassment and persecution.

The U. S. Government, throughout its history, has done its best to keep things the way the ruling rich does like them: quiet submission by the majority to the authority of the minority. And when things get right for the ruling class---when the economy goes through the downturns that pose the choice of loss of profits or a harder squeeze on working people--the government and ruling class are especially anxious to cut through democratic rights wherever possible. In times like these it becomes especially dangerous to them for working people, Blacks, and radicals to assume and make use of their rights to freedom of speech, the press, assembly, and petition through mass protest. Over the last seventy years the government has prepared for just such times through a proliferation and swelling in size of "intelligence" agencies and activities.

And the times are here now. Today, both in the United States and across the world, capitalism is in deep crisis. There simply is not enough economic room for the ruling class to continue to pull in the profits it is used to, let alone expand as it needs to, without cutting back on the living standards of the working people of the world. They've learned alot from history. They know that they cannot enforce these cuts while masses of people are on the look-out for such maneuvers. The biggest barrier to these attacks on working people is the massive vigilence, organization, and willingness to fight on the part of the working people, Blacks, women, and others most affected by such attacks, the resulting openness to radical ideas, and the corresponding growth of socialist and radical leaderships.

It is only against this backdrop that current events, including attacks on democratic rights, can be understood. Over the last seventy years the ruling class has primed its tools. It has built the Central Intelligence Agency to organize sabotage, murder and counterrevolution around the world. It has established

countless domestic "intelligence" and "security" organizations ranging from the FBI, IRS and the Post Office to local police forces for similar use inside the United States. It has given aid and comfort to private right-wing vigilante groups like Chicago's Legion of Justice and racist hate groups like Boston's ROAR ("Restore Our Alienated Rights"). The American ruling class and the U. S. government that serves it are today the most vicious, most powerful threats to democratic rights in history.

Little bits and pieces of information about this antidemocratic machine have split out over the last few years. The Watergate scandal focused an alert public's attention and curiousity on the government, and through various protests and legal initiatives more and more dirt is coming to light. Complicity of the FBI in the harassment, up to and including murder, of Black rights leaders has been exposed. Some of the CIA's crimes in Chile have made their way through "top secret" file folders into the mass media. The Socialist Workers Party suit against the FBI,CIA and other government agencies has helped expose a whole number of government intrusions on the most basic civil liberties not only of socialists, Black rights fighters and antiwar organizers, but of people who have done no more than seek information from political dissidents. We have seen only the tip of this dangerous iceberg.

Throughout this century when the heat has become too strong under one government department or agency, another steps forward to claim the role of guardian of democratic rights. Today it is Congress against the White House, the Kelly FBI against the Hoover FBI, Democrats against Republicans.

> Today, both in the United States and across the world, capitalism is in deep crisis.

Once again it is critical to turn to history---including very recent history---to get an appreciation of the merits of these claims. In his introduction to the important book COINTELPRO (Monad Press, 1975) Noam Chomsky documents a century of Democratic Party instigation of and complicity with some of the worst abuses of government power, giving way to lip service and very little action against these abuses only when their own immediate interests are threatened. He writes:

> Given the historical context, it is entirely natural that the beginnings of the ferment of protest and organization in the early 1960s set the apparatus of repression into operation once again...Nor is it surprising that American liberalism looked the other way, until the repression struck home under Nixon, and even then, it is important to emphasize once again, indignation was largely restricted to Nixon's crimes, insignificant in comparison to the revelations of the same period. Matters are no different when the Black anarchist Martin Sostre---designated as a "prisoner of conscience" by Amnesty International---is mercilessly persecuted by the state, or when Black students are murdered at Orangeburn and Jackson State and so on.

It is sufficient to note that not one indictment or prosecution or Congressional action to stop these abuses has resulted from the

exposure of hundreds of government violations of the law, unconstitutional persecutions and harassment, and complicity in murder of Indians, Black Americans, socialists, and the people of Chile. On the contrary, Democratics and Republicans alike continue to vote more money to keep the most abusive government agencies going, to investiage Daniel Schorr's and to meet the legal expenses of Justice Department coverups and maneuvers against suits like those of the Socialist Workers Party. And neither have these politicians, many claiming to be liberal, raised a meaningful voice in response to the dangerous assaults on the Equal Rights Amendment, and on the right of Black people to bus their children to better schools without fear of physical attack. In fact, every Democratic and Republican politician either trys to avoid even discussing these most pressing threats, or stands openly opposed to these basic rights.

The cold, hard fact is that today's political reality demands a choice from supporters of democratic rights. Do we support maintenance of the archaic, crisis-ridden capitalist system with its built-in need to suppress protest and, thus, its basic anti-democratic thrust, or do we favor its replacement with a social system which can only exist on the basis of democratic rights, a socialist system of ecoromic democracy which alone can lay the groundwork for political democracy.

It is through coming to grips with this reality that more and more people are becoming socialists. The Socialist Workers Party has a long history of vigorous campaigns in defense of democratic rights, both when the tide was against them, and in better times. Our party is rooted in the proud history of fights against persecution and of radical labor leaders including the cases of Haywood, the McNamara brothers, Niibet abd Billings, Debs, Sacco and Vanzetti, and the Minneapolis Teamster union leaders of the 1940s. We have devoted extensive effort to defense activity in support of organizations with which we disagree, such as the Communist Party. We are active participants in international fights for democratic rights and in defense of political prisoners, from Latin America to Eastern Europe and the Soviet Union. And throughout our history we have been forced to wage major defense campaigns on behalf of our own members and organization.

The Socialist Workers Party takes seriously the obligation of socialists to be the most vigorous and consistent champions of democratic liberties. And we also take seriously the tradition of waging the broadest defense campaigns possible, uniting all those who support democratic rights regardless of other political views. Our suit for an end of government harassment is aimed both at protection of our own rights, and at exposure of and an end to government persecution of all of those it finds itself in disagreement with.

The Socialist Workers Party is fighting a historic suit against the repressive agencies of the federal government. The Political Rights Defense Fund, a non-partisan civil liberties organization, is raising funds and organizing support for the suit.

Whether or not you agree with the ideas of the Socialist Workers Party, we urge you to support the efforts of the Political Rights Defense Fund to protect constitutional rights.

Noam Chomsky points outs, "As for the State instruments of repression, one can expect little change in coming years, at least until the rise of mass-based popular organizations devoted to social change and to an end of oppression and injustice." It is time to take up the watchword of the Industrial Workers of the World: "An injury to one is an injury to all!"

THE RIGHT OF REVOLUTION IN AMERICAN PUBLIC ADDRESS 1776-1860

by

Winfred Allen, Jr., M.S.
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> A society failing to build in a "safety valve" for the relief of felt pressure is a society traveling the road to reaction and possibly violent revolution.

Revolutionary activity in America is a paradoxical phenomenon. Both implicitly and explicitly, American's have been reinforced in the concept that anti-status quo attitudes and behavior are not in the best interest of one's self nor to society at large. The four basic social institutions---the church, state, school and family---have proferred this tenant for the last one hundred years. Further, it is generally believed by the social, political and intellectual opinion in this country that revolutionary thought and action disrupting not only the peaceful tranquility of individual elements of the "politic general" but also the disruption of the government is intolerable.[1]

More to the point, the concept of the right of revolution has been indelably etched on the minds of many today as being non-productive, at best---un-American, at worst.

It is upon this latter point that the paradox finds its basis. On the one hand, we find the folkways and mores of this culture disallowing, in many cases, the merest mention of revolution for fear, it seems, of losing those rights, values and life styles held to be beneficial and fundamental to the Union. On the other hand, there is a lack of awareness of the actual fundamentals of the Union. The discernment of the basic principles upon which the country was founded and upon which the reference to the foundation is made causes one to awe at the apparent ignorance or genuine aversion many have of those fundamentals.

The purpose of this investigation is to expose the revolution. The paradox which has been presented is not without resolution; an effort shall be made in that direction.

The hypothesis of this study is that there does exist a foundation in the American political and social ethic that supports the inherent and inalienable "right of revolution".

The term "right" needs a somewhat extended explanation to distinguish it from its often wrongly used analogy---"privilege". This latter expression concerns itself with that which is granted in a society to those who satisfy certain of the regulations of that society. The former term, "right"---our paramount concern---deals not with that which is given to a citizen, but that which is inherent in one's citizenship; that which exists by the fact that the person exists.

This paper derives movement from the discussion of the right of revolution as being inherent in one's humanity and inherent in one's citizenship. As Sigmund Freud points out in Civilization and Its Discontents, "...the irremediable antagonism (is) between the demands of instinct and the restrictions of civilization..."[4] It follows, then, that this expression of the right of revolution is characteristic of Man in all his socio-psychological development both as an individual and as part of a society. It is neither foreign nor alien to Americans or the American ethic. "Our great fear of revolution in this country comes not from its lawlessness, but because it is lawful, and built into the stone and mortar of the foundation."[5]

The period under investigation is that part of Americana which extended between the wars---1776-1860. It is in this historic point in her development that the country founded the fundamentals of her purpose.

Awareness, not advocacy, is the intent of the author in this effort. A society failing to build in a "safety valve" for the relief of felt pressure is a society traveling the road to reaction and possibly violent revolution. To advocate such behavior simply out of hand would be a sophomoric effort; failure to build a pressure relief is suicidal.

Especially in this Bicentennial year, let us not forget our origins

> ...that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such forms, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate safety and happiness. Prudence, indeed, will dictate that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpation, pursuing invariably the same object, evinces a design to reduce them under absolute depotism, it is their right, it is their duty, to throw off such government and to provide new guards for their security.[6]

This investigation exposes the tradition "from whence cometh" the inherent and inalienable right of revolution. The process will examine the rhetoric of the forefathers which laid the foundation for the philosophy of this right.

The influence of the orator in the period 1776-1860 was far reaching. Abraham Lincoln, reflecting history, notes--- "Oratory is the great power that moves nations to do and dare; it was oratory that wrecked Rome and made Christianity live".

It happens sometimes that an action by itself is not enough of an impetus for an expected re-action. Follow-up communications are needed that will foster great pathos for the incident. Reports do not always reflect an actual occurance.

Instead, they are used as a rallying point. The Boston Massacre of March 5, 1770, is a case in point.---

> Every libertarian pseudo-revolutionary draws back and waits for something to happen that looks good... something pure, virtuous, uplifting and above all, sacrificial. It never happens that way. Revolutions are not pretty. Crispus Attucks was not pretty... he was...raucous, and sometimes drunken, but he was one of our great revolutionary heros, one of our founding fathers. The Boston Massacre was a completely unwarrented onslaught beginning with foul words and excrement thrown at a comparatively inoffensive and well behaved British soldier, but by the time Sam Adams, John Hancock, Joseph Warren and the rest of the Boston Massacre orators got through talking about it, it changed the world.

Oration on the Boston Massacre took place in Kings Chapel, Boston, on March 6, 1775. The speech was delivered by Joseph Warren---a well known medical doctor in the city. Though he strayed away from the central theme of the topic, his statements concerning the natural rights of revolution apparently did affect his audience. Such proclamations as the following were cause for the Crown to issue an arrest warrant in Warren's name.

> That personal freedom is a natural right of every man, and that property, or an exclusive right to dispose of what he has honestly acquired by his own labor necessarily arises therefrom, are truths which common sense has placed beyond the reach of contradiction...
>
> Even anarchy itself...is infinitely less dangerous to mankind than revolutionary government...Anarchy can be but of a short duration...But tyranny, when once established, entails its course on a nation to be the latest period of time.
>
> Our streets are again filled with armed men; our harbor is crowded with ships of war; but these cannot intimidate us; our liberty must be preserved; it is far dearer than life...

The right of revolution, as one of those elements listed with other natural, inalienable and human rights, was a basic theme in the agitational rhetoric of both pre- and post-revolutionary times. A right with the above characteristics does not suddenly vanish when a better form of government becomes established, when the quality of life is increased, or when tyranny is abolished. The right of revolution is omnipresent, ready to be drawn upon by all people in all present and future periods of history.

Abraham Lincoln reaffirmed this in 1848---

> Any people anywhere being inclined and having the power, have the right to rise up and shake off the existing government, and form a new one that suits them better. This is a most valuable and sacred right, a right we hope and believe is to liberate the world.

The right of revolution is basic on our system of government as well as to our philosophy of government. The forefathers of the country, once having secured the land against tyrants, developed a way of putting their philosophy into practice---not merely prattling about it! One makes initial reference to the Declaration of Independence---

> ...whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government...when a long train of abuses and usurpations...evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security.

Further reference may be made to Amendment I and Amendment II of the Constitution of the United States. Through these rhetorical modes the right has been secured in our system of government. The first amendment denies Congress, who holds all legislative power, the abridgement of free speech and free press. The right of people to assemble peaceably and petition their government for a "redress of grievances" is maintained. In the second amendment, the Constitution maintains the right of the people to "keep and bear arms".

Implicit in both of these amendments is that the people will use these rights. Further, it is implied that people will have sense to exercise those rights when they are needed.

Howard Martin notes in "The Fourth of July Oration"---

> "...orators throughout the nineteenth century gave voice to the ideals of the Declaration of Independence... While careful to warn against changing governments for light or transcient causes, most orators did not flinch from re-affirming the right of revolution.

One should keep in mind that the founding fathers were not just orators who agitated the people, but also were citizens who carried arms, attempted negotiations, and administered the revolutionary government. They were statesmen of golden tongue and silver guill.

One of the first of these men to speak out against the oppressive Royal government of the colonies was James Otis (1725-1783). In February of 1761, he delivered a speech against the "Writs of Assistance" before the Superior Court in Boston. Otis had recently resigned from his post as Massachusetts Bay Colony's judge advocate and renounced all British employment---

> I will to my dying day oppose with all the power and faculties God has given me all such instruments of slavery on the one hand, and villany on the other, as this writ of assistance is...the only principles of public conduct that are worthy of a gentleman or a man are to sacrifice estate, ease, health, and applause, and even life to the sacred calls of his country.

As a result of Otis' public statements, he lived the last fourteen years of his life as a mental cripple due to a physical assault made upon him. As one of the first men to speak out against tyranny in his homeland, he lived through those changes for which he gave his life never realizing the charges his contribution had made.

With armed combat having begun, Samuel Adams (1722-1803) kept the fires burning in the hearts of the revolutionaries. Like Otis, he was a public official paid from the coffers of the English treasury, but left their employ and became instrumental in the colonist's cause. In his address, "American Independence", August 1, 1776, Adams delivered an appeal to the Diety---

> We have this day restored the Sovereign to whom alone men ought to be obiedient. He reigns in Heaven, and with a propitious eye beholds his subjects assuming that freedom of thought and dignity of self-direction which he bestowed on them...our contest is not only whether we ourselves shall be free, but whether there shall be left to mankind an asylum on earth for civil and religious liberty. Political right and public happiness are different words for the same idea. We have no other alternative than independence...

Robert Livingstone (1746-1813), the man who administered the presidential oath for George Washington and was instrumental in the Louisiana Purchase, followed Adams' line of thought when he noted that, "No alternative was left but independence or abject submission...Let slaves or cowards disapprove the choice."

For the victors in the confrontation of 1775-1783, it was felt and duly noted that the principles for which they fought should be maintained regardless of whoever the leader may be; whatever the form of government. In George Washington's second inaugural, March 3, 1793, he states that if found derelict in his duties, he should be subject to the penalties legislated by the people. In his farewell address of September 19, 1796, he states, "The basis of our political system is the right of the people to make and to alter their constitutions of government".

Henry Lee (1756-1818), a commander of revolutionary troops and Governor of Virginia (1792-1795), was chosen to give the official "Eulogy on Washington". In that presentation, he said, "...to realize the vast hopes to which our Revolution had given birth, a change of political system became indispensable".

John Adams (1735-1826) continued the precedent set by Washington in noting the right of revolution through his inaugural address of March 4, 1797---

> ...if an attachment to the Constitution of the United States, and a conscientious determination to support it until it shall be altered by the judgements and wishes of the people...(then) it shall be my strenuous endeavor that this sagacious injunction of the two Houses shall not be without effect.

Further, Thomas Jefferson (1743-1826) continued the tradition of presidents defending the right of revolution in his first inaugural on March 4, 1801---

> All, too, will bear in mind this sacred principle that through the will of the majority is in all cases to prevail...We are all Republicans, we are all Federalists. If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it.

DeWitt Clinton (1769-1828) who spent twenty-six years in the New York government as Senator, Governor, and Mayor of New York City, reflects nearly fifty years after the Revolution began the same feelings of the early patriots. In his Phi Betta Kappa Address delivered July 22, 1823, he notes---

> But all the transcient mischiefs of revolution are mild when compared with permanent calamities of arbitrary power...The dilemma is inevitable. Either the happiness of many or the predominence of the few must be sacrificed.

In his "Reply to Hayne" on the Foote Resolution, on January 26 and 27, 1830, with the Senate chambers and gallery overflowing with citizens wishing to hear this great and powerful legislator, Daniel Webster presented his famous "Reply to Hayne"---

> We, Sir, who oppose the Carolina doctrine, do not deny that the people may, if they choose, throw off any government when it becomes oppressive... If the gentlemen (Hayne) had intended no more than to assert the right of revolution for justifiable cause, he would have said only what we all agree too. I say the right of a state to amend a law of Congress cannot be maintained but on the ground of the inalienable right of man to resist oppression; that is to say, upon the ground of revolution.
>
> This is no ambiguous condition, half allegiance and half rebellion. Let it be remembered that the Constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who establish it shall choose to continue

> it...If anything be found...which ought not to be in it, the people know how to get rid of it.

Webster's speech is the strongest, longest and the most striking use of a defense of the right of revolution. Thousands of words in his two days of address directly and indirectly are offered to maintain an awareness of and show the precedent for this right. Webster's high level of ethos and his strong use of pathos carried the speech. His logical structure made reasonable his stand.

William Henry Harrison (1773-1841) gave the longest inaugural address in our history and served the shortest amount of time. However, in that lengthy inaugural address on March 4, 1841, he reflected the philosophy of government fought for and maintained since 1775---"...the only legitimate right to govern is an express grant of power from the governed."

Wendell Phillips (1811-1884), agitator extraordinaire, was the most well known and oft quoted of abolitionist speakers of the mid-nineteenth century. In an address given in Brooklyn, New York, November 1, 1859, Phillips placed in one sentence an example of all that has been discussed herein: universality; natural elements of the right of revolution; and a searching commentary on every free man's psyche---

> Virginia did not tremble at an old grey-headed man at Harper's Ferry; they trembled at John Brown in <u>every man's conscience</u>.

In rounding out the period under investigation, one makes reference to Abraham Lincoln's first inaugural address---March 4, 1861. This presidential address has in it the strongest language used at any inaugural concerning the right of revolution. This is especially interesting in light of the realization that the country was on the verge of such action at that moment---

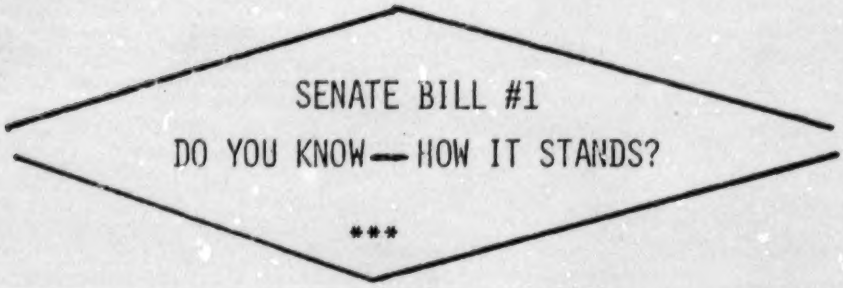
> This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their <u>constitutional</u> right of amending it or their <u>revolutionary</u> right to dismember or overthrow it.

I suggest that the right of revolution as well as other actions and philosophies less extreme in their nature is not part of most citizens cognitive awareness system. This has been brought to light by the American Civil Liberties Union and the Columbia Broadcasting System. In a survey taken by the ACLU in 1970, it was found that 90% of those interviewed (a cross section of the American public) did not recognize the Bill of Rights when shown to them. In the CBS research of the same year, it was found that the majority of those interviewed have negative feelings for at least five of the tenants of the Bill of Rights; would disallow demonstrations even if no clear and present danger existed; and, were against individuals or the press criticising the government.

It is well past the time that we should get off the tread mill of thought and reflect upon our fundamentals. As John Quincy Adams advises---

> There is a Declaration of Independence, and there is the Constitution of the United States---let them speak for themselves.

(The above is a paper revised for brevity from a longer work---Ed.)



SPACE IS AVAILABLE FOR THE SEPTEMBER ISSUE OF THE FREEDOM OF SPEECH NEWSLETTER -

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News Item - Los Angeles Times: March 24, 1976 Front Page

WASHINGTON - No constitutional right is violated when police officials publicly brand an innocent individual as a criminal, a divided Supreme Court ruled Tuesday.

In the 5-3 decision, the majority acknowledged that being misidentified as a criminal would damage a citizen's reputation, but it held that constitutional guarantee of due process of law protected only his liberty and property, not his reputation or good name.